it for patients. The complainant sold the medicine to druggists who retailed it to the patients. The defendant prepared a medicine, also flavored with chocolate, looking and tasting like Coco-Quinine, which it called Quin-Coco. The defendant induced druggists to substitute Quin-Coco in filling prescriptions for Coco-Quinine. *Held*, that the defendant be enjoined from using chocolate in the preparation of Quin-Coco. *Eli Lilly & Co.* v. *Wm. R. Warner & Co.*, 275 Fed. 752 (3rd circ.).

The court assumed that anyone, if not fraudulent, might use chocolate in such a preparation. It follows from the court's assumption that the plaintiff had no substantive right against the use of chocolate by the defendant. It is submitted that the defendant's fraud is not a sufficient basis for the creation of a new substantive right in the plaintiff. The plaintiff is entitled only to the enforcement of such rights as it already has. *Mayor etc. of Baltimore* v. *Sackett*, 135 Md. 56, 107 Atl. 557; *Pierce* v. *Stablemen's Union*, 156 Cal. 70, 103 Pac. 324; *Cronin* v. *Bloemecke*, 58 N. J. Eq. 313, 43 Atl. 605; *Chamberlain* v. *Douglas*, 24 App. Div. 582, 48 N. Y. Supp. 710; *Snyder* v. *Hopkins*, 31 Kan. 557, 3 Pac. 367. *Contra*, *Taylor Iron & Steel Co.* v. *Nichols*, 70 N. J. Eq. 541, 61 Atl. 946. See 19 HARV. L. REV. 537. The language of the opinion indicates that the court was influenced by the fact that the defendant was a "bad man." But it is unwise for equity to punish wrongdoing, since it does not afford the guaranties against arbitrariness given in a criminal prosecution. See *N. Y., N. H. & H. R. R. Co.* v. *Interstate Com. Com.*, 200 U. S. 361, 404. If, as the court held, the only element of unfair competition was the fraudulent substitution, only that substitution should have been enjoined. *Weber Medical Tea Co.* v. *Kirschstein*, 101 Fed. 580 (S. D. N. Y.). *Cf. Saxlehner* v. *Eisner & Mendelson Co.*, 88 Fed. 61, 70 (S. D. N. Y.). But it might well have been held that it was unfair competition for the defendant to imitate the complainant's medicine. If that is so, the defendant might be ordered to change the appearance and taste of its product. See NIMS, UNFAIR COMPETITION AND TRADE MARKS, 2 ed., § 135. And this might be done by prohibiting the use of a similar flavoring medium.

PARTNERSHIP — RIGHTS AND REMEDIES OF CREDITORS — RIGHT AGAINST DISSENTING PARTNER. — A and B were partners. It was customary for them to give promissory notes for advances made to the firm. The plaintiff, a third party, made advances to A for the partnership, after notice from B that he would not be bound by the transaction. B is sued on the notes. *Held*, that the plaintiff recover. *Canadian Bank of Commerce* v. *Patricia Syndicate*, 20 Ont. Weekly Notes, 529.

The weight of authority is *contra*. *Willis* v. *Dyson*, 1 Stark. 164; *Knox* v. *Buffington*, 50 Ia. 320; *St. Louis Brewing Ass'n* v. *Elmer*, 189 Mo. App. 197, 175 S. W. 102; *Bank of Bellbuckle* v. *Mason*, 139 Tenn. 659, 202 S. W. 931. But see *Campbell* v. *Bowen*, 49 Ga. 417; *Johnston* v. *Bernheim*, 86 N. C. 339. The courts argue from principles of agency. See PARSONS, PARTNERSHIP, 4 (Beale's) ed., § 84, note (*v*). But the law of partnership does not follow necessarily from the law of agency. Under the common-law theory of partnership, the better view is that each partner gives to a majority irrevocable power to act for him in carrying on the business in the usual way until dissolution. *Johnston* v. *Dutton's Adm'r*, 27 Ala. 245. See *Staples* v. *Sprague*, 75 Me. 458, 460; *Nolan* v. *Lovelock*, 1 Mont. 224, 227. See also STORY, PARTNERSHIP, 7 ed., § 123. *Contra*, *Galway* v. *Matthew*, 1 Camp. 403; S. C. 10 East, 264; *Matthews* v. *Dare*, 20 Md. 248, 273; *Feigley* v. *Sponeberger*, 5 W. & S. (Pa.) 564. And it may be argued that when there are only two partners each gives the other such authority. Under the mercantile view, if the firm has acted all members are bound regardless of dissent. The difficult question is whether one should require action by the firm to restrict the authority of a member or action by the

firm to enter into the contemplated contract. It is submitted that the former is the correct view, since from the mere relation of partnership there arises a power in each partner to act for the firm in the course of its business. But see GEORGE, PARTNERSHIP, § 103; BURDICK, PARTNERSHIP, 3 ed., 231-234. See also J. A. Crane, "The Uniform Partnership Act — A Criticism," 28 HARV. L. REV. 762, 781; W. D. Lewis, "The Uniform Partnership Act — A Reply to Mr. Crane's Criticism," 29 HARV. L. REV. 291, 302. This power may, therefore, be revoked or restricted only by action of the firm. A dissent by a majority of the partners is an act of the entity. See LINDLEY, PARTNERSHIP, 8 ed., 255. See UNIFORM PARTNERSHIP ACT, §§ 9(1), 18(h), 9(4); 1920 ONT. STAT., c. 41, §§ 7, 25 (8), 10. But a dissent by one of two partners is not.

PRIZE LAW — CAPTOR'S DUTY TO USE DUE CARE — LIABILITY FOR FAILURE TO INSURE. — Certain goods were seized by the English authorities as prize. The goods were forwarded by rail to be examined, but were burned in transit, through causes unknown. The captors had failed to insure the goods. It having appeared that the goods were not lawful prize, the foreign owners seek to recover for the failure to insure. *Held*, that they cannot recover. *The New Sweden*, 126 L. T. R. 31 (P.).

It is well settled that the captor of goods seized as prize, like any other bailee, must use due care in handling such goods. *The William*, 6 C. Rob. 316. See 3 PHILLIMORE, INTERNATIONAL LAW, 683. The question here is whether that duty of care involves a duty to insure. The precise point seems not to have arisen before. If the captor insures for his own benefit, since there is no obligation to turn the proceeds over to the owner of the goods it is clear that the owner need not reimburse the captor for the cost of such insurance. *The Cairnsmore*, [1921] 1 A. C. 439; *The Catherine and Anna*, 4 C. Rob. 39. But the English court has recently held that where the captor effects insurance for the benefit of the owner, he is entitled to reimbursement. *The United States*, [1920] P. 430. While it does not necessarily follow from the last case that the captor must insure, yet this would be a desirable extension of the decision. In the business world of today, the insurance of cargoes is regarded as an essential expenditure; and the effecting of insurance might well be held to constitute an indispensable element of due care on the part of the captor. See LUSHINGTON, NAVAL PRIZE LAW, § 83. It is to be hoped that the principal case will not be followed.

PROXIMATE CAUSE — FORESEEABILITY AS AN ELEMENT OF CAUSATION. — The plaintiff was a passenger on the defendant's train. Through the negligence of the defendant's servants the train struck an automobile, throwing it forward against a switch handle so as to open the switch. The train ran onto a side track where it collided with a cut of cars. The plaintiff was hurled from her seat by the impact, and injured. The lower court directed a verdict for the defendant on the ground that the negligence was not a proximate cause of the injury. The plaintiff's motion for a new trial was overruled, and the plaintiff appeals. *Held*, that the judgment be affirmed. *Engle* v. *Director General of Railroads*, 133 N. E. 138 (Ind.).

A result, however unforeseeable, produced by a force directly or by a series of forces each acting directly on the next in sequence, is proximately caused by the first force. *In re Polemis and Furness, Withy & Co.*, [1921] 3 K. B. 560; *Mathews* v. *Kansas City Railways*, 104 Kan. 92, 178 Pac. 252. It is arguable that the train's running onto the side track should be considered a continuation of the original force, and that the case should be treated as one of direct causation. But even if this view is rejected, the new alignment of the track was certainly a proximate result of the negligence. This result was a passive condition. If a passive condition risks another force acting upon it so as to directly produce injury, that injury is a proximate result of the force which